

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

September 16, 1994
AO-94-32

Mr. Timothy Bassett, Director
The Massachusetts Government Land Bank
One Court Street, Suite 200
Boston, MA 02108

Re: Expenditure of Public Funds

Dear Mr. Bassett:

This letter is in response to your September 9, 1994 requesting for an advisory opinion regarding the Massachusetts Government Land Bank's planned public information effort.

You have stated that The Massachusetts Government Land Bank ("the Land Bank") is a public agency established pursuant to Chapter 212 of the Acts of 1975, as amended, to carry out a variety of public purposes, including the acquisition and redevelopment of surplus federal properties. The North Post and Main Post at Fort Devens ("Devens") are slated for closure by the United States Army. The land area of Devens includes property within the three towns of Ayer, Harvard, and Shirley ("the Towns").

Chapter 498 of the Acts of 1993 ("the Act") establishes a comprehensive procedure, and designates the Land Bank as the responsible public agency, for the acquisition and redevelopment of Devens. The Act also establishes a regional commission, the Devens Enterprise Commission ("the Commission"), which will be responsible for approving, permitting, and monitoring the efforts of public and private parties to redevelop Devens.

In accordance with Section 10 of the Act, the Land Bank and the boards of selectmen of the Towns are required to develop a reuse plan ("the Reuse Plan") and by-laws ("the By-Laws"), the purpose of which is to establish a comprehensive framework for the reuse of Devens. After approval by the boards of selectmen of the Towns and the Land Bank, the Reuse Plan and By-Laws must be presented to open town meetings of the Towns for debate and approval or disapproval. The three town meetings are scheduled to occur on the same evening in the respective towns and have been collectively referred to as the "Super Town Meeting."

The Reuse Plan and By-Laws together put forth a highly complex, lengthy, and comprehensive development plan and set of land-use control laws. The two documents together represent

the efforts of the Land Bank, town officials, individuals, and consultants during an intensive two-year effort marked by countless public hearings, meetings, and studies. If the Reuse Plan and By-Laws are approved by all the Towns at the Super Town Meeting, it will establish the plan and the legal controls that will regulate the redevelopment of Devens.

The Land Bank has a considerable investment in the passage of the Reuse Plan and By-Laws, not only due to its efforts over the past two years in developing the Reuse Plan and By-Laws, but also because it will be the public agency responsible for acquiring and redeveloping Devens in accordance with the approved Reuse Plan and By-Laws. Therefore, the Land Bank is intending to implement a public information effort directed at informing the prospective attendees at the Super Town Meeting about the content and effect of the Reuse Plan and By-Laws. That public information effort will be geared toward convincing the prospective attendees at the Super Town Meeting that they should ultimately vote "yes" on the Reuse Plan and By-Laws, thereby authorizing the redevelopment of Devens as anticipated in the Act.

You anticipate that the public information effort may involve the use of a number of techniques to reach the prospective Super Town Meeting attendees and to gauge their position on the passage of the Reuse Plan and By-Laws. Those techniques may include convening meetings, press conferences, the issuance of press releases, direct mailings, telephone polling, and advertisements in the media. This effort will involve the expenditure of public funds that are in the Land Bank's control.

You have asked three questions which I will address separately.

1. Are there any provisions in G.L. c.55 ("the Campaign Finance Laws") that will prohibit the Land Bank's expenditure of public funds, including the use of staff time, for the purposes of implementing its planned public information effort, as described above?

No. M.G.L. c. 55 is a comprehensive law governing all aspects of campaign finance in Massachusetts. See Anderson v. City of Boston, 376 Mass. 178 (1978). In Anderson, the Massachusetts Supreme Judicial Court held that a municipality could not appropriate funds, or use funds already appropriated, to promote or oppose the passage of a **ballot question** submitted to the voters. In addition, the Court indicated that "the State government and its various subdivisions should not use public funds" for such purposes. Anderson, at 195. Based upon the principles and analysis articulated by the Court in Anderson, this office has advised on numerous occasions that the campaign finance law prohibits the use of public resources by the state, a county or a municipality for political purposes. See Interpretative Bulletin OCPF-IB-91-01.

For the purposes of the campaign finance law political purposes regulated by M.G.L. c. 55 are limited to those activities designed to influence the nomination or election of

an individual or candidate or the promotion or opposition of an initiative petition, referendum or other question submitted to the voters. See generally M.G.L. c. 55, s. 1. The activity anticipated by the Land Bank will not involve either a question submitted to the voters or the election of a candidate. In particular, I note that it has been the long standing opinion of this office that:

[T]he campaign finance law does not prohibit public resources from being used in connection with . . . issues which are debated in, an open forum such as a **town meeting**. Even issues resolved at a town meeting by a secret vote have not been considered to be questions "on the ballot." (Emphasis in original) AO-93-07 at page 3.

See also AO-89-32, AO-89-05 and AO-88-23. The described activity is akin to lobbying a legislative body to promote a matter of public policy in an open meeting rather than the promotion of a question submitted to the voters and, therefore, the activity is not subject to c. 55.¹

For the above reasons, no provisions of the campaign finance law would restrict the Land Bank's expenditure of public funds, including staff time, in order to implement its planned public information campaign.

2. Are there any provisions in the Campaign Finance Laws that will restrict the scope of the Land Bank's planned public information effort, as described above.

No. For the reasons set forth in answer to your first question, no provisions of the campaign finance law would restrict the scope of your public information efforts in this matter.

3. Are there any provisions in the Campaign Finance Laws that will require the Land Bank to report its activities or expenditures on its planned public information effort to any public agency, including, but not limited to, the office?

No. M.G.L. c. 55, s. 22A requires the treasurer of a governmental unit which has expended any money or any valuable thing to influence or affect the vote on "any question submitted to the voters of any city or town" to file reports with the city or town clerk. See also M.G.L. c. 55, s. 18. However, for the reasons set forth in answer to your first question, this provision does not apply to the Land Bank's public information effort because it is directed to voters in connection with a town meeting and not a ballot question.

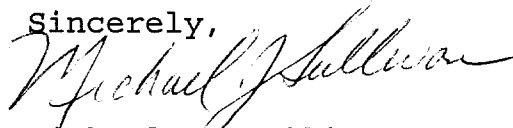
¹ The office has advised that public resources such as printed materials which are distributed in contemplation of a ballot question are subject to the provisions of M.G.L. c. 55. Based upon the facts you have presented, expenditures will not be made to influence a ballot question.

Therefore, there is no requirement that you report any expenditures made on behalf of this effort by your organization to the clerks of the Towns.

As we discussed, the Land Bank's activities may be subject to laws under the jurisdiction of other state agencies. Therefore, I would recommend that you review this matter with any other agency which may regulate the expenditure of funds by the Land Bank in connection with the "Super Town Meeting."

This opinion has been rendered solely on the basis of representations made in your letter and a meeting that was held with me and staff of this office, and solely in the context of M.G.L. c.55. Please do not hesitate to contact the office if you have any additional questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan". The signature is written in dark ink and is positioned above the typed name.

Michael J. Sullivan
Director

MJS/cp